

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JUNE 27 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ANGEL MIRANDA,

Appellant.

2 CA-CR 2007-0367

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070481

Honorable Howard Hantman, Judge

AFFIRMED

John William Lovell

Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Angel Miranda was convicted of four counts of aggravated driving under the influence of an intoxicant (DUI) after a jury found him guilty of driving while impaired and with a blood alcohol concentration (BAC) of .08 or more, both while his

driver's license was suspended or revoked and when he had two or more prior DUI convictions. The trial court sentenced him to four presumptive, concurrent, 2.5-year terms of imprisonment.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Miranda has not filed a supplemental brief.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel's recitation of the facts. Viewed in the light most favorable to upholding the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that police officer Jose Olivares stopped Miranda at about 4 a.m. on January 14, 2007, after observing him drive erratically and fail to observe a traffic signal. Miranda was arrested after he admitted he had been drinking and exhibited what Olivares had been trained to recognize as signs of intoxication, including the odor of intoxicants, bloodshot and watery eyes, slurred speech, a staggering gait, and slow reaction times. Based on breath tests Olivares had administered within an

hour of Miranda's arrest, Miranda's BAC at the time of testing was measured at more than .20.

¶4 The Arizona Motor Vehicle Division (MVD) custodian of records identified Miranda from a photograph in his driving record. She testified his driver's license had been suspended twice and then revoked in 2006, that Miranda had been served with notice of these actions, and that his license had never been reinstated. Her testimony and the MVD records admitted in evidence provided corroborating evidence of Miranda's two prior convictions for DUI offenses committed in January 2002 and December 2005.

¶5 Miranda's counsel suggests the absence of testimony from the custodian that Miranda's 2003 conviction was for a DUI offense "gives rise to the appearance of an arguable issue." As he correctly points out, because trial counsel did not raise this point, we would review the issue only for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Counsel further notes that the admission of a certified copy of Miranda's 2003 conviction precludes a showing of prejudice as required by *Henderson*. *See id.* ¶ 20 ("To prevail under [a fundamental error] standard of review, a defendant must establish both that fundamental error exists and that the error in his case caused him prejudice."). We find no error.

¶6 "The proper procedure for establishing a prior conviction is for the state to submit a certified copy of the conviction and establish that the defendant is the person to whom the document refers." *State v. Cons*, 208 Ariz. 409, ¶ 16, 94 P.3d 609, 615 (App.

2004), *citing State v. Hauss*, 140 Ariz. 230, 681 P.2d 382 (1984). As we observed in *Cons*, documents in evidence may be considered together, along with testimony, to establish a defendant's prior convictions beyond a reasonable doubt. 208 Ariz. 409, ¶ 17, 94 P.3d at 615 (correlation between conviction records established prior convictions for sentence enhancement). We note, as well, that Miranda is not claiming he was not the person who was convicted of the two prior DUI offenses submitted to the jury. *See State v. Robles*, 213 Ariz. 268, n.4, ¶ 17, 141 P.3d 748, 753 n.4, 753 (App. 2006) (certified copy of prison record and testimony linking record to defendant sufficient to establish prior convictions for sentence enhancement).

¶7 Substantial evidence supported findings of all the elements necessary for Miranda's convictions, and the sentences imposed by the trial court were within the statutory range authorized by A.R.S. § 13-701(C)(3). We find no error warranting reversal and therefore affirm Miranda's convictions and sentences.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge